S.B. CIVIL MISC. APPEAL NO.999/2006.
(Smt. Kamla Choudhary & Ors. Vs. Ramu Ram & Ors.)

Date of Order :: 26.07.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. K.R. Choudhary, for the appellants.

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This is claimants' appeal seeking enhancement over amount of Rs.1,95,000/- awarded as compensation by the Motor Accidents Claims Tribunal [Special Court, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Cases], Jodhpur by its award dated 24.04.2006 in Claim Case No.15/2005.

The award aforesaid has been made for compensation on account of accidental death of Hari Prasad, aged 65 years, husband of the appellant No.1 and father of the appellants No.2 and 3. The deceased has been alleged to be practicing as a Vaidya, managing his dispensary and earning about Rs.15,000/- per month. The learned Judge of the Tribunal has noticed from the evidence on record that though the witnesses, wife and son of the deceased, have alleged the income of the deceased at Rs.15,000/- per month but the registers Ex. 12 and Ex. 13 produced in relation thereto do not carry the necessary particulars of the treatment administered

to the patients nor carry signatures of the patients and the daughter of the deceased Kumari Madhu who signed the registers has not been produced in evidence. In these circumstances, the learned Judge estimated the income of the deceased at Rs.4,000/- per month and deducting one-third for personal expenditure of the deceased, took multiplicand at Rs.32,000/- per annum, and in view of the age of the deceased at 65 years, applied a multiplier of 5 and assessed the pecuniary loss at Rs.1,60,000/-. The wife of the deceased has been awarded Rs.10,000/- towards physical and mental agony and the other claimants have been allowed Rs.5,000/- each towards non-pecuniary loss; and another Rs.10,000/- have been allowed for funeral expenses and yet another Rs.5,000/- towards other expenses and in that manner, the Tribunal has arrived at a figure of Rs.1,95,000/- to be awarded as compensation to the applicants and has further allowed interest at the rate of 7.5% per annum from the date of filing of the claim application.

Learned counsel Mr. Choudhary appearing for the appellants has strenuously contended that the documentary evidence produced on record include the patient-registers and obviously the income of the deceased could have been deduced out of those registers and the Tribunal has been seriously in error in estimating the income of the deceased

only at Rs.4,000/- per month. Learned counsel further submitted that the Tribunal has not awarded any amount towards consortium to the wife of the deceased and has further awarded interest at a lower rate of 7.5% per annum and the award deserves modification.

Having heard learned counsel for the appellants and having examined the award, this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

The learned Judge of the Tribunal has pointed out that the documents Ex. 12 and Ex. 13 do not carry necessary particulars of treatment administered to the patients nor even the signature of the patients. The claimant No.3 who had signed the registers has not been produced in evidence. The submission of the learned counsel for the appellants that the income of the deceased could be deduced merely by the count of number of patients stated in those registers cannot be accepted. Such documentary evidence as produced by the appellants cannot be taken even in proof of the deceased administering treatment to the persons named in those registers what to say deducing of any professional income. It has of course been found proved that the deceased was practicing as a Vaidya and in the overall circumstances it cannot be said that the learned Judge has committed any error

or irregularity in estimating the income of the deceased at Rs.4,000/- per month.

Moreover, in the present case, the learned Judge has deducted only one-third towards personal expenditure of the deceased though he was in 65 years of age and his son Rajesh, claimant No.2, in 33 years of age, is alleged to be working and earning independently as a Stamp Vendor. A daughter of the deceased is stated to have got married and the other daughter Kumari Madhu, claimant No.3, has been shown to be in 30 years of age and capable of taking up the job as she has done earlier in some Company. Cumulative effect of these facts is that in view of the age of the deceased and the age and standing of the claimants, it cannot be accepted that in this case only one-third ought to have been deducted for the personal expenditure of the deceased; and in the overall fact situation of this case the contribution from the deceased to the claimants and the family ought not to have been taken more than 50% of his income. Application of multiplier in this case is also not on the lower side and in the overall circumstances the pecuniary loss estimate stands rather on the higher side and in any case cannot be said to be low or inadequate. An amount of Rs.10,000/- has been awarded towards non-pecuniary loss to the wife of the deceased though classified

under the head of physical and mental agony. Non-pecuniary loss to the wife inclusive of loss of consortium at Rs.10,000/- cannot be said to be inadequate. The children have also been allowed reasonable non-pecuniary loss figures. Moreover, Rs.10,000/- have been awarded towards funeral expenses and such an amount is definitely excessive. The learned Judge of the Tribunal has awarded another Rs.5,000/- towards other expenses without specifying the same and this amount seems to have been awarded unnecessarily. Rate of interest at 7.5% per annum is also not on lower side.

In the ultimate analysis, the award remains definitely on higher side and the claim for its upward revision by the claimants does not seem justified.

The appeal has no substance and there appears no reason to admit the same. The appeal is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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